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Verizon Corporate Services Group Inc

To: U.S. Patent and Trademark Office –   **From:**   Christian R. Andersen
MAIL STOP: APPEAL BRIEF -   Specialist – Intellectual Property
PATENTS
Examiner: H.A. AGDEPPA
Group Art Unit: 2642

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FORMAL SUBMISSION OF:

1) Transmittal Letter; and   2) Appeal Brief.

Title: **SYSTEMS AND METHODS FOR PROVIDING AUDIO INFORMATION TO SERVICE AGENTS**
Serial No.   **09/845,486**
Filing Date: **April 30, 2001**
First Named Inventor: **Joshua BERS**
Atty. No.   **00-4064**
Customer Number: **32127**

CERTIFICATE OF FACSIMILE TRANSMISSION

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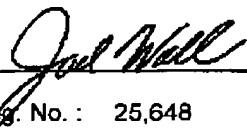
TRANSMITTAL OF APPEAL BRIEF

Docket No.
00-4064

In re Application of: Joshua Bers et al.

Application No. 09/845,486	Filing Date April 30, 2001	Examiner H. A. Agdeppa	Group Art Unit 2642

Invention: SYSTEMS AND METHODS FOR PROVIDING AUDIO INFORMATION TO SERVICE AGENTS

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: January 17, 2006   .

The fee for filing this Appeal Brief is $ 500.00   .

[X] Large Entity   [ ] Small Entity

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Dated: March 10, 2006

Appeal Brief Transmittal
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Docket No.: 00-4064
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Joshua Bers et al.

Application No.: 09/845,486   Art Unit: 2642

Filed: April 30, 2001   Examiner: H. A. Agdeppa

For: SYSTEMS AND METHODS FOR PROVIDING
      AUDIO INFORMATION TO SERVICE
      AGENTS

APPEAL BRIEF

Mail Stop Appeal Brief- Patents
Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This appeal is from the decision of the Primary Examiner dated November 16, 2005 ("Final Office Action"), finally rejecting claims 1, 3, 6-10, and 12-35, which are reproduced as an Appendix to this brief. The Notice of Appeal was filed on January 17, 2006. This application was filed on April 30, 2001.

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I. REAL PARTIES IN INTEREST

The real parties in interest are Verizon Corporate Services Group Inc., a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 600 Hidden Ridge Drive, Irving, Texas 75038, and also BBNT Solutions LLC, a company organized and existing under the laws of the state of Delaware, and having a place of business at 10 Moulton Street, Cambridge, Massachusetts, 02138.

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II. RELATED APPEALS AND INTERFERENCES

Applicants (hereinafter "Appellants") are not aware of any related appeals or interferences that would affect the Board's decision on the current appeal.

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III. STATUS OF CLAIMS

Claims 1, 3, 6-10, and 12-35 are pending. Claims 1, 9, 10, 18, 23, 28, 30, and 34 are independent claims. All pending claims, reproduced in the Claims Appendix attached hereto, were rejected in the Final Office Action and are the subject of this appeal.

In the Final Office Action, claims 1, 3, 6-10, 28-30, 34, and 35 were rejected under 35 U.S.C. § 103 as allegedly unpatentable over US 5,812,638 ("Muller") in view of US 6,263,066 ("Shtivelman"). Claims 18-27 and 31-33 were rejected under 35 U.S.C. § 103 as allegedly unpatentable over Muller in view of Shtivelman and further in view of US 5,991,390 ("Booton").

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IV. STATUS OF AMENDMENTS

No Amendment After Final Rejection has been entered into the prosecution record of the present application.

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V. SUMMARY OF CLAIMED SUBJECT MATTER

The present application includes claims directed to routing calls to service agents. The following is a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, as required by 37 C.F.R. § 41.37(c)(1)(v). The following explanation is not intended to be used to construe the claims, which are believed to speak for themselves, nor do Appellants intend the following explanation to modify or add any claim elements, or to constitute a disclaimer of any equivalents to which the claims would otherwise be entitled. Appellants provide the following detail solely because the USPTO in a recent review of a previously submitted brief has returned it, taking the position that insufficient invention-summary detail was provided, with which Appellants emphatically disagree. However, solely for purposes of prosecuting the application through the appeal process, the additional detail is reluctantly and, Appellants believe, un-necessarily provided herewith.

A.   Claim 1

Independent claim 1 recites a method of routing calls to service agents by one or more network devices. An incoming call is received at a switching device and routed to a voice response device. (Specification, page 12: 14-17; Fig. 5, block 510). In some embodiments the switching device is ACD/PBX 130, which may consist of two major components: an automatic call distributor (ACD) and a private branch exchange (PBX). (Specification, page 7: 1-2; Figures 1 and 2.) Voice response device may be voice response unit (VRU) 140, which may consist of any type of computer system that interacts with a caller. (Specification, page 7, line 6; Figures 1 and 3.)

Further in the method of claim 1, a caller is prompted, e.g., by VRU 140, to provide audio input relating to the incoming call. (Specification, page 12: 22-23; Fig. 5, block 530). A unique call identifier is assigned to the incoming call. (Specification, page 12: 17-21; Fig. 5, block 520). Assigning the unique call identifier in some embodiments is performed by computer telephone integration (CTI) server 160. (Specification, page 12: 17-19; Figures 1 and 4.) CTI server 160 may include any type of computer system, such as a mainframe, minicomputer, or personal computer, capable of combining data and voice information in such a way as to enhance telephone services. (Specification, page 7: 11-13.)

Further in the method of claim 1, the audio input is stored, e.g., by VRU 140, in a file

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associated with the unique call identifier. (Specification, page 12, line 23 - page 13, line 5; Fig. 5, block 530). The incoming call is transferred from the voice response device to the switching device and is stored in a call queue within the switching device. (Specification, page 13: 6-11; Fig. 5, block 540). The audio input is provided to an available service agent, and the caller is connected to the available service agent after the audio input is provided to the available service agent. (Specification, page 13, line 12 – page 14, line 8; Fig. 5, blocks 550-590). The call may be connected by use of voice device 170. (Figure 1; Specification .) Voice device 170 may consist of any device that can transmit, receive, and/or process voice data, such as a telephone. (Specification, page 7: 16-17.) The audio file may be provided from CTI server 160 to a data device 180 of an available agent. (Figure 1; Figure 5, block 570; Specification, page 13: 21-23.) Data device 180 may consist of any type of computer system, such as a personal computer, laptop, personal digital assistant, or the like, capable of connecting to a network 150. (Specification, page 7: 17-19; Figure 1.)

B.   Claim 9

Independent claim 9 recites a system for routing calls to service agents. The system comprises means for receiving calls from callers. (ACD/PBX 130; see Figures 1 and 2; Specification, page 6, line 12; page 7: 1-5; page 8: 1-20.) The system further comprises means for prompting the callers to provide audio input relating to the calls. (VRU 140 see Figures 1 and 3; Specification, page 6: 12-13; page 7: 6-10; page 8, line 23 – page 10, line 15). A unique call identifier is assigned to the received call. (CTI 160; see Figures 1 and 4, Specification, page 6, line 13; page 7: 11-15; page 10, line 18 – page 12, line 10.) Further, the system of claim 9 comprises means for recording the audio input associated with the unique call identifier. (VRU 140; see Figures 1 and 3; Specification, page 6: 12-13; page 7: 6-10; page 8, line 23 – page 10, line 15). Additionally comprised in the system of claim 9 are means for sending the calls to available ones of the service agents. (ACD/PBX 130; see Figures 1 and 2; Specification, page 6, line 12; page 7: 1-5; page 8: 1-20; page 13: 6-7.) Further, the system of claim 9 comprises means for connecting the callers to the available service agents after providing the audio input to the available service agents. (CTI server 160, voice device 170, data device 180; see Specification page 13, line 21 – page 14, line 8.)

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C.   Claim 10

Independent claim 10 recites a system for routing calls to service agents. The system comprises a switching device, e.g., ACD/PBX 130, configured to receive an incoming call from a caller and to route the incoming call to a voice response device, e.g., VRU 140. (Specification, page 12: 14-17; Fig. 5, block 510). The system of claim 10 further comprises the voice response device, e.g., VRU 140, configured to receive the incoming call from the switching device, prompt the caller to provide audio input relating to the incoming call, record the audio input, and send the incoming call to the switching device for transmitting to an available one of the service agents. (Specification, page 12, line 22 – page 13, line 11; Fig. 5, block 530.) The system of claim 10 further comprises a server, e.g., CTI server 160, configured to associate the recorded audio input with the incoming call, receive identification of the available service agent from the switching device, and provide the recorded audio input to the available service agent, e.g. via data device 180. (Specification, page 13, line 12 – page 14, line 8; Fig. 5, blocks 550-590).

D.   Claim 18

Independent claim 18 recites a system for routing calls to service agents. The system comprises a switching device, e.g., ACD/PBX 130, configured to receive an incoming call from a caller and to route the incoming call to a voice response device, e.g., VRU 140. (Specification, page 15: 15-19; Fig. 7, block 710; Figure 6). The system of claim 18 further comprises the voice response device configured to receive the incoming call from the switching device, prompt the caller to provide audio input relating to the incoming call, record the audio input, send the incoming call back to the switching device (Specification, page 15, line 20 – page 16, line 8; Fig. 7, block 720), initiate a call to an available one of the service agents, provide the recorded audio input to the available service agent when the available service agent answers the initiated call, e.g., using voice device 170, and conference the incoming call and the initiated call to permit the available service agent to service the incoming call. (Specification, page 16: 9-19.)

E.   Claim 23

Independent claim 23 recites a system for routing calls to service agents. The system comprises a switching device, e.g., ACD/PBX 130, configured to receive an incoming call from a caller. (Specification, page 17: 12, 18-22; Figure 8.) The system of claim 23 further comprises a

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voice response device, e.g., VRU 140, configured to receive an incoming call from a caller, prompt the caller to provide audio input relating to the incoming call, record the audio input, initiate a call to an available one of the service agents, provide the recorded audio input to the available service agent when the available service agent answers the initiated call, and conference the incoming call and the initiated call to permit the available service agent to service the incoming call. (Specification, page 18, line 8 – page 19, line 18; Figure 8.) The switching device of claim 18 is further configured to receive the initiated call from the voice response device, store the initiated call in a call queue, and send the initiated call from the call queue to the available service agent. (Specification, page 19: 1-3.)

F.   Claim 28

Independent claim 28 recites a network device for routing calls to service agents. The network device comprises a forwarding engine, e.g., ACD/PBX 130, configured to receive an incoming call from a caller, prompt the caller to provide audio input relating to the incoming call, assigning a unique call identifier to the received call send the incoming call to an available one of the service agents, provide the audio input to the available service agent when the available service agent answers the incoming call, receive an acknowledgement indicating that the available service agent has heard the audio input, and connect the caller to the service agent in response to the acknowledgement. (Specification, page 20, line 21 – page 22, line 7.) The network device further comprises one or more audio detectors, e.g., a speech detector/recorder, configured to record the audio input from the caller. (Specification, page 21: 6-8.)

G.   Claim 30

Independent claim 30 recites a method for routing calls to service agents by one or more network devices. An incoming call is received, e.g., by an ACD/PBX 130 or a VRU 140. (Specification, page 12: 15-16; page 18: 8-9.) A caller is prompted, e.g., by VRU 140 or ACD/PBX 130, to provide audio input relating to the incoming call. (Specification, page 18: 14-15; page 21, line 3.) A unique identifier is assigned to the call, e.g. by CTI server 160 or ACD/PBX 130 (Specification, page 12: 17-19; page 21: 11-12), and the audio input associated with the unique call identifier is recorded. (Specification, page 21: 8-9.) A call to an available one of the service agents is initiated. (Specification, page 13, line 12 – page 14, line 8; page 21, line 17.) The audio input is

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provided to the available service agent when the service agent answers the initiated call.
(Specification, page 21: 18-19.) The caller is connected to the available service agent to permit the
available service agent to service the incoming call. (Specification, page 22: 6-7.)

H.   Claim 34

Independent claim 34 recites a method for routing calls to service agents by a network
device. An incoming call is received, e.g., by an ACD/PBX 130 or a VRU 140. (Specification,
page 12: 15-16; page 18: 8-9.) A caller is prompted, e.g., by VRU 140 or ACD/PBX 130, to
provide audio input relating to the incoming call. (Specification, page 18: 14-15; page 21, line 3.)
A unique identifier is assigned to the call, e.g. by CTI server 160 or ACD/PBX 130 (Specification,
page 12: 17-19; page 21: 11-12), and the audio input associated with the unique call identifier is
recorded. (Specification, page 21: 8-9.) The incoming call is sent to an available one of the service
agents. (Specification, page 21, line 17.) The audio input is provided to the available service agent
when the service agent answers the initiated call. (Specification, page 21: 18-19.) The caller is
connected to the available service agent to permit the available service agent to service the incoming
call. (Specification, page 22: 6-7.)

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1.   That claims 1, 3, 6-10, 28-30, 34, and 35 are unpatentable over Muller in view of Shtivelman under 35 U.S.C. § 103(a).

2.   That claims 18-27 and 31-33 are unpatentable over Muller in view of Shtivelman and further in view of Booton under 35 U.S.C. § 103(a).

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VII.   ARGUMENT

All pending claims stand rejected as allegedly obvious under 35 U.S.C § 103(a). These rejections should be reversed at least because the Examiner has not met his burden of stating a *prima facie* case of obviousness with respect to Appellants' claims. It is well settled that

> [t]o establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP § 2143. Further, "[t]he teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure." Id. (citing In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). Here, the Examiner has failed to show that the cited references teach or suggest all the claim limitations, much less that one of ordinary skill in the art would have been motivated to combine the cited references.

A.   The combination of Muller and Shtivelman fails to teach or suggest a "unique call identifier" as recited in claims 1, 9, 28, 30, and 34.

Independent claims 1, 9, 28, 30, and 34 were each rejected under Section 103 as obvious over Muller in view of Shtivelman. These claims each recite, among other limitations, "*assigning a unique call identifier to the incoming call.*" The Examiner acknowledged that "Muller does not teach assigning a unique call identifier to the incoming call." (Final Office Action, page 4.) However, the Examiner attempted to use Shtivelman to cure Muller's acknowledged deficiencies even though Shtivelman nowhere teaches or suggests assigning a unique call identifier to a call. Accordingly, the Examiner has failed to state a *prima facie* case of obviousness at least because the cited references do not teach each and every recited claim limitation. In addition, the Examiner has failed to provide a motivation in either reference to combine them, and thus has failed to state a *prima facie* case of obviousness for at least this further reason. Moreover, Muller and Shtivelman are incapable of combination.

1.   Shtivelman fails to teach or suggest "assigning a unique call identifier to the incoming call."

Contrary to the position taken by the Examiner (see Final Office Action, page 4),

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Shtivelman clearly does not teach or suggest assigning a unique identifier to a call. As the Examiner notes (see id.), Shtivelman discloses several methods for prioritizing and queuing calls. However, the Examiner has not shown that any of these methods necessarily requires or suggests assigning a unique identifier to a call. At most, as the portions of Shtivelman cited by the Examiner make clear, Shtivelman teaches no more than associating a multimedia message with the record of a communication. (Shtivelman, col. 9: 19-67.) Shtivelman is wholly silent as to how this association is made, and there is absolutely no teaching or suggestion in Shtivelman of assigning unique identifiers to either multimedia messages or records of communications, much less to incoming calls.

The Examiner appears to have acknowledged that, like Muller, Shtivelman does not teach assigning a unique call identifier to a call because the Examiner explained that Shtivelman teaches "well known queuing methods" such as "priority queuing/queuing according to agents' skills, etc." (Final Office Action, page 4.) Allegedly, "[s]uch well known queuing means queue calls not only in a first-in-first-out basis," and "[t]herefore assigning a unique identifier to the call or using a unique identifier already present in the call such as the ANI or caller ID is inherent." (Id.) That is, the Examiner's argument boils down to the reasoning that, because there allegedly were other well known means of queuing besides "first-in-first-out," assigning a unique identifier to a call is inherent in the prior art. Applicants respectfully submit that the mere fact that calls are prioritized in some fashion does not require or even suggest assigning a unique identifier to a call. In fact, placing calls in a queue means that a unique identifier is not necessary because calls will be handled out of the queue and not according to any assigned identifier. Thus, Shtivelman actually teaches away from this element of the claims.

Further, the Examiner contended that Shtivelman's teaching of rearranging the order of calls in a queue, e.g., "record priority bumping," inherently requires a unique identifier. (Final Office Action, page 10.) However, Shtivelman is entirely silent as to how this "bumping" is conducted. (See Shtivelman, col. 9: 35-42.) Shtivelman sets forth no requirement that records in a queue be assigned a unique identifier, even if such records are to be rearranged. It is undisputed that ways are well known in which records in a data structure may be rearranged without assigning a unique identifier; therefore, the Examiner has not met his burden of establishing the inherency of unique

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identifiers, and the rejection based on the alleged combination of Muller and Shtivelman cannot stand.

Thus, for at least the foregoing independent reason, independent claims 1, 9, 28, 30 and 34 are patentable over the prior art of record. Furthermore, dependent claims 3, 6-8, 12-17, 29, 31-33, and 35 are patentable at least by reason of their dependence on the foregoing independent claims.

2.   Muller also fails to teach or suggest "assigning a unique call identifier to the incoming call."

The Examiner also appears to argue in the alternative that Muller inherently requires a unique call identifier because "it is . . . inherent that some call identifier is associated with the call." (Final Office Action, page 3.) However, Muller in fact contains no teaching or suggestion that would inherently require assigning a unique call identifier. Rather, Muller teaches at most a system that processes incoming calls in the order received without assigning a unique call identifier. (Muller, col. 5: 18-20.)

Muller discloses a telephone queuing system that processes incoming calls to a directory assistance facility. (Id., Figs. 1-3.) Muller's system includes the following elements: a recording system for incoming calls 22, a queuing system 28 for holding calls that cannot be connected immediately to an operator, and a replaying system 42 for replaying the recorded message to the operator. Thus, the system taught by Muller prompts an incoming caller to provide information that is temporarily recorded and stored. (Id., col. 4: 35-61.) Once the information provided by the incoming caller has been recorded and/or stored, the information may be forwarded or communicated to the operator, who will use the information to search for the telephone number of the desired party. (Id., col. 5: 10-14.) During high volume periods, the incoming caller may not be immediately connectable with an operator. (Id., col. 5: 14-16.) Therefore, Muller's queuing system 28 serves as a reservoir that holds incoming calls until an operator is available. (Id., Fig. 2; col. 5: 20-22.) The queuing system 28 may be "conventionally implemented in a switch" and does no more than "link the operator . . . to an incoming caller in the queue." (Id., col 5: 15-27; Figures 1-5)

As is clear from the foregoing description of Muller's system, Muller, unlike the present invention, requires a first in, first out (FIFO) process. Accordingly, with respect to Muller's system, there is no need to assign a unique identifier because each incoming call is processed in the order received. (Id., col. 1: Figures 2-5.)

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Contrary to the Examiner's assertion (Final Office Action, page 3), it is not inherent that a call identifier be associated with the call. As the Federal Circuit has explained, "[i]nherency... may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Scaltech Inc. v. Retec/Tetra L.L.C.,* 51 USPQ2d 1055 (Fed. Cir. 1999). Muller does not expressly teach or suggest *assigning a unique call identifier* to the incoming call. Moreover, because Muller's queuing system is necessarily a FIFO process, Muller has no need to employ a unique call identifier. Rather, Muller's system can simply rely on the order in which calls were received.

Accordingly, Applicants respectfully disagree with the Examiner's position that "the only way to relay both the queued incoming call and the recording to the operator/agent together, at the right time, is to use some identifier to associate the call and the recording." (Final Office Action, pages 3-4.) In fact, as explained above, Muller teaches a first-in-first-out (FIFO) system that renders a unique identifier unnecessary. In light of this fact and the Examiner's acknowledgement that "Muller does not teach assigning a unique call identifier to the incoming call" (Office Action, page 5), independent claims 1, 9, 28, 30 and 34 are clearly patentable over Muller. Furthermore, dependent claims 3, 6-8, 11-17, 29, 31-33, and 35 are patentable at least by reason of their dependence on the foregoing independent claims.

3.   **One of ordinary skill in the art would have lacked motivation to combine Muller and Shtivelman.**

The Examiner's stated motivation for combining Muller and Shtivelman is that the

> queuing means [disclosed in Shtivelman] are old and well known and
> qualify as standard queuing means, which are at least contemplated
> by Muller. Moreover, ACD/call center calls routinely monitor calls
> for agent performance, store calls for statistical purposes, etc. For
> many years now, a caller, before being connected to an agent, will
> hear an announcement indicating that the call may be recorded for . . .
> various purposes. If no call identifier were assigned to these calls
> there would be no way to later retrieve these calls.

(Final Office Action, pages 4-5.) As an initial matter, Applicants had noted that the Examiner appears to have taken Official Notice as to what queuing methods are old and well known, as well as to the alleged fact that call centers "routinely monitor calls". Accordingly, Applicants seasonably requested that the Examiner provide documentary evidence to support the taking of Official Notice

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as is required by 37 CFR § 1.104(d)(2) and MPEP § 2144.03. (See Applicants' Response filed August 18, 2005, page 14.) However, such support was never provided. Accordingly, inasmuch as the rejections of all pending claims depend on the alleged combination of Muller and Shtivelman, all claim rejections set forth in the Final Office Action should be reversed at least because the taking of Official Notice has not been supported.

Further, neither Muller nor Shtivelman contain even a suggestion that assigning a unique identifier to an incoming call would be desirable. The Examiner's allegation that "standard queuing means . . . are at least contemplated by Muller" (Final Office Action, page 4) surely does not rise to the level of a motivation to assign a unique identifier to an incoming call. Similarly, the mere fact that Shtivelman may teach various queuing methods by no means suggests unique identifiers assigned to incoming calls.

Thus, for at least the foregoing second independent reason, independent claims 1, 9, 28, 30, and 34 are patentable over the prior art of record. Furthermore, dependent claims 3, 6-8, 11-17, 29, 31-33, and 35 are similarly patentable.

4.   One of ordinary skill in the art could not have been successful in attempting to combine Muller and Shtivelman.

A *prima facie* case of obviousness requires a reasonable expectation of success in combining references, and the Examiner has made no such showing in the instant case. Moreover, it is plain that the alleged combination of Muller and Shtivelman, on its face, could not succeed. Muller teaches a directory assistance system in which information from an incoming caller is recorded and replayed to an operator before the incoming call is connected to an operator. (E.g., Muller, Fig 4.) Shtivelman, in contrast, teaches voice mail as an alternative to completing a live call. (E.g., Shtivelman, Abstract.) Thus, even if Shtivelman did teach assigning unique identifiers to his voicemail messages, which he does not, modifying Muller with this alleged teaching of Shtivelman would result at most in a system in which voice mail messages, but not audio input associated with live calls, was associated with audio input. Accordingly, the Examiner has not shown, and cannot show, that one of ordinary skill would have had a reasonable expectation of success in combining Muller and Shtivelman, and this is a further reason why the rejections of independent claims 1, 9, 28, 30, and 34, and dependent claims 3, 6-8, 12-17, 29, 31-33, and 35, should be reversed.

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B.   **The combination of Muller and Shtivelman fails to teach or suggest audio input "associated with the unique call identifier" as recited in claims 1, 9, 30, and 34.**

Independent claims 1, 9, 30, and 34 each recite audio input "associated with the unique call identifier." The Office Action wholly fails to address this limitation, and is instead confined to "assigning a unique call identifier to an incoming call." (Final Office Action, page 4.) With regard to the foregoing limitation, the Final Office Action did no more than assert that Muller teaches recording and storing audio input. (Final Office Action, page 3.) Indeed, Muller plainly does not teach or suggest audio input "associated with the unique call identifier." Moreover, Shtivelman teaches voice mail as an alternative to completing a live call (e.g., Abstract), and thus clearly does not teach or suggest associating an audio file with a live call, much less use of a unique call identifier to make such an association. (See Shtivelman, Abstract.)

Accordingly, the rejection of independent claims 1, 9, 30, and 34 should be reversed for at least the foregoing reasons, as should the rejections of dependent claims 3, 6-8, 12-17, 31-33, and 35.

C.   **Muller does not teach or suggest the "switching device" required by claims 1, 10, 18, and 23.**

Claim 1 recites "transferring the incoming call from the voice response device (VRU) *back to the switching device.*" Similarly, claim 10 recites "a voice response device configured to receive the incoming call from the switching device and to route the incoming call to a voice response device" as well as "a voice response device configured to receive the incoming call from the switching device, prompt the caller to provide audio input relating to the incoming call, record the audio input, and send the incoming call to the switching device for transmitting to an available one of the service agents." Claims 18 and 23 each recite, among other limitations, "a switching device configured to receive an incoming call from a caller." Thus, the present claims clearly require a switching device that sends and receives calls within a system, as well as receives calls from without the system. Muller, in contrast, teaches unidirectional processing of incoming calls. (*See* Figures 2-5.) According to Muller, as set forth above, the incoming call is prompted, recorded, placed in Muller's queuing system 28, and then provided to the operator.

Accordingly, even if the Examiner is correct that "any system that can receive an incoming call has a switching device of some sort that actually receives the call" (Office Action, page 2), it is

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irrelevant whether Muller teaches such a system because Muller clearly does not teach or suggest the bi-directional communications required by claims 1 and 10. These claims require receiving an incoming call at a switching device, routing the call to the voice response device, storing the audio input in a file associated with the unique call identifier; and transferring the incoming call from the voice response device *back to the switching device*. Thus, there is *bi-directional* communication between the Automated Call Distributor/Private Branch exchange (ACD/PBX) 130 and the Voice Response Unit (VRU) 140. There is no teaching or suggestion that the system disclosed by Muller includes bi-directional communication between the queuing system and the recording system 22.

In fact, Muller teaches away from the bi-directional communication required by claims 1 and 10 in that an object of Muller's invention is to "increase customer satisfaction by reducing operator response time." (Col. 1: 43-44.) Incorporating bi-directional communications between Muller's queuing system 28 and recording system 22 would negatively impact the speed at which incoming calls are processed. As such, regardless of whether the examiner is correct that a switching device is inherent in receiving a telephony call (Final Office Action, page 3), clearly it is not inherent that there be bi-directional communication between the ACD/PBX 130 and the VRU 140.

Significantly, the Examiner appears to have abandoned the contention that Muller teaches the bi-directional communication required by Applicants' claims, and now apparently contends that Shtivelman teaches such bi-directional communication. (Final Office Action, page 13.) However, as noted above, the Examiner has failed to present a *prima facie* case of obviousness for the combination of Muller and Shtivelman. Moreover, Shtivelman cannot teach transferring an incoming call back to a switching device, etc., as is required by Applicants' claims, because Shtivelman teaches a call being simply received, whether into voice mail or as a live call. (E.g., col. 5: 24-28.) Once Shtivelman's agent receives a voice mail, the agent must actually place a call back to the caller; there is no call to be transferred back to a switch. (See col.8: 5-25.) Moreover, even if Shtivelman did teach the afore-mentioned claim limitations the Examiner has not stated, much less provided support from the prior art of record, for motivation to have modified Muller with Shtivelman's alleged teaching.

For at least the foregoing reasons, independent claims 1, 10, 18, and 23 are patentable over Muller. Further, claims 3, 6-8, 11-17, 19-22, and 24-27 are patentable at least by reason of their dependence on one of the foregoing independent claims.

D.   Claims 18-27 and 31-32 are patentable over the proposed combination of Muller, Shtivelman, and Booton.

Claims 18-27 and 31-32 were rejected as allegedly obvious over the combination of Muller, Shtivelman, and Booton. Independent claims 18 and 23 recite "the voice response device configured to . . . conference the incoming call and the initiated call." Dependent claim 31 recites "placing a conference call to the available service agent." The Examiner conceded that Muller and Shtivelman do not teach "a call center that uses conferencing to connect calls to available operators/agents." (Final Office Action, page 7.) Further, the Examiner contended that Booton compensates for the acknowledged deficiencies of Muller and Shtivelman. However, the rejection of claims 18-27 and 31-33 should be reversed at least for either of the two independent reasons that (1) there is no motivation for one of ordinary skill in the art to have modified the alleged combination of Muller and Shtivelman with the purported teachings of Booton, and (2), Muller, Shtivelman, and Booton are incapable of combination.

1.   One of ordinary skill in the art would have lacked motivation to combine Muller, Shtivelman, and Booton.

The Examiner's stated motivation for modifying the combination of Muller and Shtivelman with alleged teachings of Booton was the unsupported assertion that conferencing is a well known method for connecting calls (Final Office Action, pages 7-8.). Even if true, the mere fact that conferencing is a well known method of connecting calls completely fails to rise to the level of a motivation for one of ordinary skill in the art to have modified Muller and Shtivelman with the foregoing claim limitations. For example, the unsupported statement of motivation provided by the Examiner provides no reason for one of ordinary skill to have configured the recited voice response device to "conference the incoming call and the initiated call," as is required by claims 18 and 23.

Thus, at least because there is no motivation for one of ordinary skill in the art to have combined Booton with Muller and Shtivelman, the rejection of claims 18-27 and 31-33 should be reversed.

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2.   One of ordinary skill in the art could not have been successful in attempting to combine Muller, Shtivelman, and Booton.

Muller discloses a system for handling incoming calls to a call center such as a directory assistance facility. (Muller, Abstract.) Shtivelman discloses a "queuing system in a call center." (Shtivelman, Abstract.) Booton, in contrast, discloses a "private automated branch exchange (PABX)" that may be commanded by an "automatic call distribution system (ACD) . . . to make an outgoing external call to the teleworking agent at the recorded remote terminal and to join the two calls in conference mode." (Booton, Abstract.) In proposing that Muller and Shtivelman be combined with the purported teaching of Booton, the Examiner did not provided any explanation as to how or why one of ordinary skill would have had a reasonable expectation that he proposed combination would have been successful. Moreover, because Muller and Shtivelman lack the PABX required by Booton, the cited references clearly disclose different and incompatible structures, and the proposed combination could not have been successful.

Thus, at least because one of ordinary skill in the art would not have had a reasonable expectation of success in attempting to combine Booton with Muller and Shtivelman, the rejection of claims 18-27 and 31-33 should be reversed.

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E. Appellants' dependent claims are separately patentable.

    1. The prior art of record does not teach or suggest requesting the caller "to provide information relating to a reason for the incoming call" as recited in claims 3 and 12.

Dependent claim 3 recites "requesting, by the voice response device, the caller to provide information relating to a reason for the incoming call." Dependent claim 12 includes a similar limitation. These claims were both rejected as allegedly obvious over the combination of Muller and Shtivelman, but the foregoing limitation was not addressed in the Final Office Action. Moreover, Muller does not teach or suggest such a limitation. Muller teaches information from a caller being recorded, but this information is limited to information about the caller, such as the caller's name and locality. (Muller, col. 4: 41-45.) Indeed, Muller teaches against the caller providing "information relating to a reason for the incoming call" because Muller teaches a directory assistance system in which the caller's reason for calling is clearly presumed. (Id., col. 4: 10-12.) There would have been no reason for a caller to Muller's system to provide "information relating to a reason for the incoming call" because the reason for the call could only be to obtain directory assistance.

Shtivelman, even if it could have been combined with Muller, which it could not, does not compensate for Muller's failure to teach or suggest "information relating to a reason for the incoming call." Shtivelman teaches allowing callers to leave voice mail messages (Shtivelman, col. 3: 25), but suggests no more than that such voice mail messages may request a return call. (Id., col. 8: 5-6.) Shtivelman's voice mail messages are clearly intended to allow callers to avoid holding for an agent, rather than to provide agents with information about a call's purpose in advance of the call. Accordingly, Shtivelman not only fails to teach, but also clearly does not suggest, requesting a caller "to provide information relating to a reason for the incoming call."

For at least the foregoing reasons, claims 3 and 12 are separately patentable.

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2.   **The prior art of record does not teach or suggest that "the server is configured to generate a unique call identifier for the incoming call" or that "the voice response device is configured to obtain the unique call identifier from the server and associate the unique call identifier with the recorded audio input" as recited in claim 14.**

Dependent claim 14 recites that "the server is configured to generate a unique call identifier for the incoming call" and that "the voice response device is configured to obtain the unique call identifier from the server and associate the unique call identifier with the recorded audio input." The Final Office Action stated that "it is inherent that some server or some element having server functionality . . . act as the call processor/router." (Final Office Action, page 5.) However, the Examiner's inherency argument is not supported by the prior art, nor does it address the limitations of claim 14. That is, even if "some server or some element having server functionality" were inherently present in Muller or Shtivelman to "act as the call processor/router," such a disclosure would not teach or suggest that "the server is configured to generate a unique call identifier for the incoming call" as is required by claim 14.

Further, the Final Office Action failed to address the limitation of claim 14 that "the voice response device is configured to obtain the unique call identifier from the server and associate the unique call identifier with the recorded audio input." Even if "some server" inherently existed in the systems disclosed by Muller and Shtivelman, such a disclosure would not read on elements of claim 14 requiring a configuration of the voice response device, much less that "the voice response device is configured to obtain the unique call identifier from the server and associate the unique call identifier with the recorded audio input."

For at least the foregoing reasons, claim 14 is separately patentable, as is claim 15 which depends from claim 14.

3.   **The prior art of record does not teach or suggest that "the server is further configured to obtain additional information related to the incoming call and provide the additional information along with the recorded audio input to the available service agent" as recited in claim 16.**

Dependent claim 16 recites that "the server is further configured to obtain additional information related to the incoming call and provide the additional information along with the recorded audio input to the available service agent." The Final Office Action did not address this limitation of claim 16, but instead generically argued that the limitation was inherent in Muller

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along with the above-discussed limitations of claim 14. (See Final Office Action, page 5.)
Accordingly, claim 16 is separately patentable for reasons similar to those discussed above
regarding claim 14. First, Appellants respectfully submit that, contrary to the Examiner's
unsupported assertion, it is not inherent "that some server or some element having server
functionality . . . act as the call processor/router." Second, even if "some server" were inherent in
Muller or Shtivelman, such a disclosure would not teach or suggest that "the server is further
configured to obtain additional information related to the incoming call and provide the additional
information along with the recorded audio input to the available service agent."

Accordingly, claim 16 is separately patentable for at least the foregoing reasons.

4.   **The prior art of record does not teach or suggest that "the server is configured
to interact with a data device associated with the available service agent to play
the recorded audio input for the available service agent" as recited in claim 17.**

Dependent claim 17 recites that "the server is configured to interact with a data device
associated with the available service agent to play the recorded audio input for the available service
agent." The Final Office Action did not address this limitation of claim 17, but instead generically
argued that the limitation was inherent in Muller along with the above-discussed limitations of
claim 14. (See Final Office Action, page 5.) Accordingly, claim 17 is separately patentable for
reasons similar to those discussed above regarding claims 14 and 16. First, Appellants respectfully
submit that, contrary to the Examiner's unsupported assertion, it is not inherent "that some server or
some element having server functionality . . . act as the call processor/router." Second, even if
"some server" were inherent in Muller or Shtivelman, such a disclosure would not teach or suggest
that "the server is configured to interact with a data device associated with the available service
agent to play the recorded audio input for the available service agent."

Accordingly, claim 17 is separately patentable for at least the foregoing reasons.

5.   **The proposed combination of Muller, Shtivelman, and Booton does not teach or
suggest an indication "that the available service agent has heard the recorded
audio input" as recited in claims 21, 24, 33, and 35.**

Dependent claims 21, 24, and 33 were rejected under Section 103 as obvious over Muller in
view of Shtivelman and further in view of Booton. Dependent claim 35 was rejected under Section
103 as obvious over Muller in view of Shtivelman. Claims 21 and 24 recite that "the voice response
device is further configured to wait for an acknowledgement that indicates that the available service

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agent has heard the recorded audio input." Claims 33 and 35 similarly recite that "waiting for an acknowledgement that indicates that the available service agent has heard the audio input". The Examiner acknowledged (Final Office Action, page 6) that Muller does not teach this claim limitation, but rather teaches manipulating the timing of audio input to match the time it takes an agent to process recorded information. The Examiner does not suggest that either Shtivelman or Booton teach waiting for an acknowledgement that indicates that the available service agent has heard the audio input. Further, Muller clearly teaches against Applicants' recited limitation, inasmuch as in Muller's system there would be no reason to wait for an acknowledgement that audio input has been heard.

Accordingly, the Examiner plainly failed to state a prima facie case of obviousness with respect to claims 21, 24, 33, and 35, for at least two reasons. First, the Examiner has provided no prior art reference teaching an acknowledgement of audio input before a call is connected. Second, even if the prior art did teach or suggest such a limitation, the Examiner has provided no support in the prior art for any motivation to modify Muller with this limitation. At most, the Examiner contends that Muller provides such motivation because "there would be no purpose in connecting the caller to the operator/agent before they had heard the recorded audio input." (Final Office Action, pages 6-7.) Accepting the Examiner's contention arguendo as true, the Examiner still has identified no teaching or suggestion in Muller – or in any other prior art reference – that waiting for an acknowledgement before a call is connected is a desirable way to ensure that a service agent has had the opportunity to hear available input. Further, Muller is incapable of the proposed modification because Muller allows no opportunity for an acknowledgement of audio input.

Moreover, to the extent that the Examiner believes that support for a prima facie case of obviousness with respect to claims 21, 24, 33, and 35 is found in the prior art or is supported by Official Notice, Applicants respectfully requested that the Examiner provide documentary evidence of this support in the form of a prior art reference or affidavit pursuant to 37 CFR § 1.104(d)(2) and MPEP § 2144.04. However, no such support has been provided, and the Examiner has clearly failed to state a prima facie case of obviousness with respect to claims 21, 24, 33, and 35.

Accordingly, dependent claims 21, 24, 33, and 35 are separately patentable for at least the foregoing reasons.

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6.   The prior art of record does not teach or suggest that "the switching device is
        further configured to drop a connection to the voice response device after the
        voice response device conferences the incoming call and the initiated call" as
        recited in claims 22 and 25.

Dependent claims 22 and 25, rejected over the proposed combination of Muller, Shtivelman,

and Booton, recite that "the switching device is further configured to drop a connection to the voice

response device after the voice response device conferences the incoming call and the initiated call."

The Final Office Action failed to allege that any reference in the prior art teaches or suggests this

claim limitation. (See Final Office Action, page 8.) Instead, the Examiner asserted, without any

support, that it would have been obvious to drop an "initial connection" after a "call is bridged

between conference participants." (Id.) The Examiner provided an alleged motivation for such a

modification of the proposed combination of Muller, Shtivelman, and Booton, again without any

support from the prior art, stating that "[t]here is no need of a connection any longer and is a waste

of resources besides being the standard method of operation in conference calling."

Even if it were obvious to drop an "initial connection" after a "call is bridged between

conference participants," which the Examiner has not shown, such a disclosure would not teach or

suggest the specific claim limitation that "the switching device is further configured to drop a

connection to the voice response device after the voice response device conferences the incoming

call and the initiated call." Moreover, if such a limitation were truly obvious, then the Examiner

should have found support for the limitation, and also for motivation to implement the limitation, in

the prior art of record. However, the Examiner has not provided support either for the foregoing

limitation of claims 22 and 25, or for motivation to have implemented that limitation.

Inasmuch as the Examiner has not met the burden of a *prima facie* case of obviousness

regarding claims 22 and 25, and inasmuch as the foregoing limitation does not appear to be taught

or suggested in the prior art of record, claims 22 and 25 are separately patentable.

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CONCLUSION

In view of the foregoing arguments, Appellants respectfully submit that the pending claims are novel over the cited references. The Examiner's rejections of all pending claims are improper because the prior art of record does not teach or suggest each and every element of the claimed invention. In view of the above analysis, a reversal of the rejections of record is respectfully requested of this Honorable Board.

It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 07-2347. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Respectfully submitted,

Dated: March 10, 2006   By _____

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VIII. APPENDIX – CLAIMS APPENDIX

Pursuant to 37 CFR § 41.37(c)(vii), the following listing provides a copy of the claims involved in the appeal.

1. A method of routing calls to service agents by one or more network devices, comprising:

receiving an incoming call from a caller at a switching device;

routing the incoming call to a voice response device;

prompting the caller to provide audio input relating to the incoming call;

assigning a unique call identifier to the incoming call;

storing the audio input in a file associated with the unique call identifier;

transferring the incoming call from the voice response device back to the switching

device;

storing the incoming call in a call queue within the switching device;

providing the audio input to an available service agent; and

connecting the caller to the available service agent after providing the audio input to

the available service agent.

3. The method of claim 1, wherein the prompting the caller includes:

requesting, by the voice response device, the caller to provide information relating to a reason for the incoming call.

6. The method of claim 1,

wherein a server communicates with the voice response device and the available

service agent; and

wherein the providing the audio input includes:

receiving, by the server, an identity of the available service agent to receive

the incoming call,

retrieving the audio input from the file using the unique call identifier, and

sending the retrieved audio input to the available service agent.

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7.   The method of claim 1, wherein the providing the audio input includes:
obtaining additional information related to the incoming call, and

         providing the additional information along with the audio input to the available
service agent.

8.   The method of claim 1, wherein the providing the audio input includes:
         sending the audio input to a data device associated with the available service agent.

9.   A system for routing calls to service agents, comprising:
         means for receiving calls from callers;
         means for prompting the callers to provide audio input relating to the calls;
         assigning a unique call identifier to the received call;
         means for recording the audio input associated with the unique call identifier;
         means for sending the calls to available ones of the service agents;
         means for providing the audio input to the available service agents; and
         means for connecting the callers to the available service agents after providing the
audio input to the available service agents.

10.   A system for routing calls to service agents, comprising:
         a switching device configured to receive an incoming call from a caller and to route
the incoming call to a voice response device;
         the voice response device configured to receive the incoming call from the switching
device, prompt the caller to provide audio input relating to the incoming call, record the audio input,
and send the incoming call to the switching device for transmitting to an available one of the service
agents; and
         a server configured to associate the recorded audio input with the incoming call,
receive identification of the available service agent from the switching device, and provide the
recorded audio input to the available service agent.

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12.   The system of claim 10, wherein the voice response device is configured to request the caller to provide information relating to a reason for the incoming call.

13.   The system of claim 10, wherein the switching device is further configured to store the incoming call in a call queue and route the incoming call from the call queue to the available service agent.

14.   The system of claim 10, wherein the server is configured to generate a unique call identifier for the incoming call; and

                wherein the voice response device is configured to obtain the unique call identifier from the server and associate the unique call identifier with the recorded audio input.

15.   The system of claim 14, wherein the server is further configured to retrieve the recorded audio input from the voice response device using the unique call identifier.

16.   The system of claim 10, wherein the server is further configured to obtain additional information related to the incoming call and provide the additional information along with the recorded audio input to the available service agent.

17.   The system of claim 10, wherein the server is configured to interact with a data device associated with the available service agent to play the recorded audio input for the available service agent.

18.   A system for routing calls to service agents, comprising:

                a switching device configured to receive an incoming call from a caller and to route the incoming call to a voice response device; and

                the voice response device configured to receive the incoming call from the switching device, prompt the caller to provide audio input relating to the incoming call, record the audio input, send the incoming call back to the switching device, initiate a call to an available one of the service agents, provide the recorded audio input to the available service agent when the available service

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agent answers the initiated call, and conference the incoming call and the initiated call to permit the available service agent to service the incoming call.

19.   The system of claim 18, wherein the voice response device is further configured to send the initiated call to the switching device for transmission to the available service agent.

20.   The system of claim 19, wherein the switching device is further configured to store the initiated call in a call queue and send the initiated call from the call queue to the available service agent.

21.   The system of claim 18, wherein the voice response device is further configured to wait for an acknowledgement that indicates that the available service agent has heard the recorded audio input and bridge the incoming call and the initiated call in response to the acknowledgement.

22.   The system of claim 18, wherein the switching device is further configured to drop a connection to the voice response device after the voice response device conferences the incoming call and the initiated call.

23.   A system for routing calls to service agents, comprising:
          a switching device configured to receive an incoming call from a caller; and
          a voice response device configured to receive an incoming call from a caller, prompt the caller to provide audio input relating to the incoming call, record the audio input, initiate a call to an available one of the service agents, provide the recorded audio input to the available service agent when the available service agent answers the initiated call, and conference the incoming call and the initiated call to permit the available service agent to service the incoming call;
          wherein the switching device is further configured to receive the initiated call from the voice response device, store the initiated call in a call queue, and send the initiated call from the call queue to the available service agent.

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24.   The system of claim 23, wherein the voice response device is further configured to wait for an acknowledgement that indicates that the available service agent has heard the recorded audio input and bridge the incoming call and the initiated call in response to the acknowledgement.

25.   The system of claim 23, wherein the switching device is further configured to drop a connection to the voice response device after the voice response device conferences the incoming call and the initiated call.

26.   The system of claim 23, wherein the voice response device is configured to receive the incoming call over a public telephone network.

27.   The system of claim 26, wherein the voice response device is configured to send the initiated call to the switching device over the public telephone network.

28.   A network device for routing calls to service agents, comprising:
        a forwarding engine configured to receive an incoming call from a caller, prompt the caller to provide audio input relating to the incoming call, assigning a unique call identifier to the received call send the incoming call to an available one of the service agents, provide the audio input to the available service agent when the available service agent answers the incoming call, receive an acknowledgement indicating that the available service agent has heard the audio input, and connect the caller to the service agent in response to the acknowledgement; and
        one or more audio detectors configured to record the audio input from the caller.

29.   The system of claim 28, wherein the forwarding engine is further configured to store the incoming call in a call queue and send the incoming call from the call queue to the available service agent.

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30.   A method for routing calls to service agents by one or more network devices,
comprising:

   receiving an incoming call from a caller;

   prompting the caller to provide audio input relating to the incoming call;

   assigning a unique call identifier to the received call;

   recording the audio input associated with the unique call identifier;

   initiating a call to an available one of the service agents;

   providing the audio input to the available service agent when the service agent answers
the initiated call; and

   connecting the caller to the available service agent to permit the available service agent
to service the incoming call.

31.   The method of claim 30, wherein the initiating a call includes:

   placing a conference call to the available service agent.

32.   The method of claim 31, wherein the connecting the caller to the available service agent
includes:

   bridging the initiated call and the incoming call together.

33.   The method of claim 30, wherein the connecting the caller to the available service agent
includes:

   waiting for an acknowledgement that indicates that the available service agent has
heard the audio input; and

   bridging the initiated call and the incoming call in response to the acknowledgement.

34.   A method for routing calls to service agents by a network device, comprising:

   receiving an incoming call from a caller;

   prompting the caller to provide audio input relating to the incoming call;

   assigning a unique call identifier to the received call;

   recording the audio input associated with the unique call identifier;

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sending the incoming call to an available one of the service agents;

providing the audio input to the available service agent when the service agent answers the incoming call; and

connecting the caller to the available service agent to permit the available service agent to service the incoming call.

35.   (The method of claim 34, wherein the connecting the caller to the available service agent includes:

waiting for an acknowledgement that indicates that the available service agent has heard the audio input; and

connecting the caller to the available service agent in response to the

acknowledgement.

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IX.   EVIDENCE APPENDIX

(Not applicable.)

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X.   RELATED PROCEEDINGS APPENDIX

(Not applicable.)

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